

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

ST. CLAIR COUNTY EMPLOYEES')	
RETIREMENT SYSTEM, Individually and on)	
Behalf of All Others Similarly Situated,)	
)	
Plaintiff,)	Civil Action No. 3:18-cv-00988
)	
vs.)	District Judge William L. Campbell, Jr.
)	Magistrate Judge Alistair E. Newbern
ACADIA HEALTHCARE COMPANY, INC.,)	
et al.,)	
)	
Defendants.)	
)	

**JOINT STATUS REPORT CONCERNING PROPOSED AMENDED CASE
MANAGEMENT ORDER AND REQUEST FOR STATUS CONFERENCE**

Pursuant to the Court’s directive at the September 7, 2022 conference, Plaintiffs Chicago & Vicinity Laborers’ District Counsel Pension Fund and New York Hotel Trades Council & Hotel Association of New York City, Inc. Pension Fund (“Plaintiffs”), and Defendants Acadia Healthcare Company, Inc. (“Acadia” or the “Company”), Joey Jacobs, Brent Turner, and David Duckworth (collectively, “Defendants,” and together with Plaintiffs, the “Parties”) submit this status report concerning their efforts to agree on a proposal for amending the Case Management Order in this action (ECF 155). As discussed below, despite their efforts, the Parties have not been able to reach an agreement on a proposed schedule and therefore submit competing proposals below and request an additional status conference to discuss these matters with the Court.

1. Since the Court entered the operative scheduling order in this case on June 16, 2022, *see* ECF 155, the Parties have been diligently proceeding with discovery.
2. Plaintiffs are currently in the process of taking the twenty-five (25) fact depositions allotted to them. They have completed thirteen (13) depositions and state that they will notice and

complete the remaining twelve (12) depositions following the completion of Defendants' document production and the resolution of outstanding discovery disputes.

3. Recently, the Court granted Plaintiffs' motion to compel the production of documents from The Priory Group ("Priory") in the United Kingdom. *See* ECF 155. During a September 7, 2022 status conference, the Court gave the parties until September 29, 2022 to agree on search terms to be applied to Priory documents and to submit a revised case schedule that contemplated the search and production of Priory documents. Defendants filed an objection to the Court's order regarding Priory documents. *See* ECF 172. As referenced in the objection, Defendants have been informed by Priory that Priory will not voluntarily produce any additional documents, and, thus, Defendants are pursuing the procedures under The Hague Convention to compel documents from Priory in an effort to comply with the Court's order. To that end, contemporaneously with this status report, Defendants will be filing an application for a Letter of Request to obtain the requested documents from Priory.

4. In addition, the Parties await a ruling on Plaintiffs' motion to compel production of preservation-related documents currently being withheld by Defendants on the basis of attorney-client privilege and work product protection (*see* ECF 124), which will guide the resolution of the Parties' impasse on hundreds of other preservation-related documents that are currently in dispute. The Parties are also currently discussing Plaintiffs' request that Defendants de-designate certain documents currently being withheld on the basis of attorney-client privilege and work product protection, which the Parties will promptly bring to the Court should they be unable to resolve this dispute informally.

5. Per the Court's directive during the September 7, 2022 status conference, the Parties met-and-conferred in an effort to negotiate a proposed extension of the Case Management

Order (ECF 155) to accommodate the remaining discovery to be completed in the Action, and the pending motions that could impact that discovery. The Parties exchanged multiple proposals for amending the schedule but did not reach an agreement. As a result, the Parties submit the competing proposals below.

6. **Plaintiffs' Proposal.** Defendants' attempt to obtain documents via The Hague Convention is untimely and, more importantly, insufficient to comply with Defendants' obligations. Defendants were ordered to collect documents from Priory and apply search terms on those documents for production to Plaintiffs. Defendants have made clear that they cannot and therefore will not do that. And even if Defendants are someday successful in obtaining documents from Priory through The Hague Convention procedures, that will not satisfy Defendants' obligation to produce fulsome discovery under the Federal Rules of Civil Procedure, as The Hague Convention and the U.K.'s Evidence (Proceedings in Other Jurisdictions) Act of 1975 ("Evidence Act") procedures do not permit Defendants to collect full mailboxes of the relevant Priory custodians and apply search terms to those documents, as required by the Order. Further, The Hague Convention and Evidence Act procedures do not recognize Rule 26 document requests, such as requests for "all documents and communications" concerning Priory's financial performance or documents "concerning" Priory's document preservation, which Plaintiffs are entitled to here. Rather, only limited, specifically-identified documents may be requested under The Hague Convention and Evidence Act procedures, such as a contract entered into on a specified date or an invoice sent on a specified date. Indeed, "[t]he English courts are *very strict* regarding the scope of a letter of request."¹ "If documentary evidence is sought, those documents must be

¹ <https://www.penningtonslaw.com/news-publications/latest-news/2018/transatlantic-litigation-obtaining-evidence-from-a-uk-entity-for-use-in-us-court-proceedings>.

clearly identified.”² “For example, an order will not be made against a non-party to the US proceedings requiring them to state what relevant documents they have or had in their possession, custody and control. Further, the court will only require specific documents to be disclosed which are adequately particularised in the letter of request.”³ At bottom, “[t]he English court rules on the disclosure of documents are very restrictive in comparison to the equivalent discovery rules in the US.”⁴

7. Defendants have made clear they cannot comply with their production obligations with respect to Priory documents, and The Hague Convention and Evidence Act procedures – which can take many months or more, particularly in this post-Covid environment – are not an adequate alternative. Therefore, there is no need to further delay resolution of this four-year-old case by tying the discovery cutoff to resolution of Defendants’ efforts pursuant to The Hague Convention and Evidence Act, as Defendants propose. Rather, given Defendants’ representations concerning their inability to comply with the Court’s order regarding the collection, search, and production of Priory documents, Plaintiffs intend to file a motion for sanctions.

8. Plaintiffs are hopeful that the outstanding discovery disputes can be resolved expeditiously so that this case can proceed to trial. Nevertheless, to accommodate the resolution of the outstanding discovery disputes, Plaintiffs propose to extend the fact discovery period and modify the pre-trial deadlines accordingly, subject to the Court’s approval.

9. Plaintiffs’ requested extension would modify the schedule as follows:

Event	Current Deadline	Proposed Deadline
Completion of Fact Discovery	September 21, 2022	60 days after resolution of currently outstanding discovery disputes

² *Id.*

³ *Id.*

⁴ *Id.*

Event	Current Deadline	Proposed Deadline
		concerning preservation-related documents
Submission of Affirmative Expert Reports	October 24, 2022	35 days after completion of fact discovery
Submission of Rebuttal Expert Reports	November 22, 2022	35 days after submission of affirmative expert reports
Responses to Rebuttal Expert Reports	December 20, 2022	28 days after submission of rebuttal expert report
Expert Depositions Completed	January 13, 2023	28 days after submission of responses to rebuttal expert reports
Summary Judgment/Daubert Motions	January 25, 2023	21 days after completion of expert depositions
Responses to Summary Judgment/Daubert Motions	February 22, 2023	28 days after submission of summary judgment/Daubert motions
Replies to Summary Judgment/Daubert Motions	March 8, 2023	21 days after submission of responses to summary judgment/Daubert motions
Trial Date	June 6, 2023	90 days after submission of replies to summary judgment/Daubert motions, or at the Court's convenience

10. Following resolution of currently outstanding discovery disputes, Plaintiffs propose that the Parties would submit an Amended Case Management Order with dates certain that substantially conform to the above-referenced deadlines.

11. **Defendants' Proposal.** Defendants submit that Plaintiffs' proposed schedule does not provide adequate time for the discovery the Court has ordered to occur—nor even for the discovery Plaintiffs are seeking. As noted above, the Court has ordered Defendants to collect and produce documents from Acadia's former subsidiary in the U.K., Priory, which was sold to a third party in January 2021. Defendants objected to the ruling, arguing that it should be reversed because Defendants do not have possession, custody, or control over these Priory documents. But in an effort to comply with the Court's order, Defendants nonetheless attempted to obtain these materials from Priory following the ruling. That effort included providing the Court's ruling to Priory's general counsel, retaining an e-discovery vendor to receive and process the collection, offering to cover the costs of processing, reviewing, and producing these documents, and discussing the matter with Priory's outside counsel. Priory, however, refused to provide the requested documents, taking the position that there is no legal or contractual basis requiring them to provide this information to Defendants and that the Court has no jurisdiction over Priory.

12. With Priory refusing to provide these documents voluntarily, the only remaining path for Defendants to obtain these documents is through the processes that exist for compelling discovery from a U.K. entity—specifically, the U.K.'s Evidence (Proceedings in Other Jurisdictions) Act of 1975 ("Evidence Act"). Accordingly, contemporaneously with this filing, Defendants are filing an application for issuance of a Letter of Request pursuant to the Evidence Act in an effort to obtain the requested documents from Priory. If the Court grants that application, Defendants would then submit the executed Letter of Request to the applicable U.K. court to enforce it. That process, of course, may take some time to complete. But it is the only feasible option to obtain this information at this point.

13. Moreover, Plaintiffs have indicated that they do not intend to notice and complete the remaining depositions until Defendants complete their document production, which presumably Plaintiffs mean to include the requested documents from Priory.

14. Plaintiffs' proposed schedule, however, does not account for this discovery or provide enough time for it to occur. Accordingly, in light of the Court's order compelling documents from Priory and the other discovery Plaintiffs indicate they intend to take, Defendants submit that the schedule should be more appropriately tied to the resolution of the outstanding discovery disputes *and* the timing of production of Priory documents, consistent with the Court's direction during the September 7th conference.

15. Defendants therefore propose that the schedule be amended as follows:

Event	Current Deadline	Proposed Deadline
Completion of Fact Discovery	September 21, 2022	60 days after the later of (a) resolution of currently outstanding discovery disputes or (b) Defendants' effort to obtain documents from Priory through The Evidence Act
Submission of Affirmative Expert Reports	October 24, 2022	35 days after completion of fact discovery
Submission of Rebuttal Expert Reports	November 22, 2022	35 days after submission of affirmative expert reports
Responses to Rebuttal Expert Reports	December 20, 2022	28 days after submission of rebuttal expert report
Expert Depositions Completed	January 13, 2023	28 days after submission of responses to rebuttal expert reports

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Trial Date	June 6, 2023	90 days after submission of replies to summary judgment/Daubert motions, or at the Court's convenience

16. Following resolution of the currently outstanding discovery disputes or Defendants' efforts to obtain documents from Priory through the Evidence Act, whichever is later, Defendants propose that the Parties would submit an Amended Case Management Order with dates certain that substantially conform to the above-referenced deadlines.

17. Both of the requested extensions above would conform to the requirements of Local Rule 16.01(h)(1) in that no dispositive motion deadline, including response and reply briefs, would be later than 90 days in advance of the trial date.

18. Given the Parties' disagreement on the proposed schedule, the Parties respectfully request a status conference with the Court to discuss these proposals or any alternative amendment to the schedule to account for the remaining discovery.

Dated: September 29, 2022

Respectfully submitted,

s/ Darryl J. Alvarado

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I hereby certify that on this September 29, 2022, I electronically filed the following document and accompanying exhibits with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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